

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

JACOB SELL,

Plaintiff,

v.

No. 2:23-cv-00326-DLM

J. GONZALEZ,

Defendant.

**MEMORANDUM OPINION AND ORDER**  
**GRANTING MOTION TO PROCEED IN FORMA PAUPERIS**

**THIS MATTER** comes before the Court on *pro se* Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs, filed April 14, 2023. (Doc. 2.)

**I. Application to Proceed *in forma pauperis***

The statute for proceedings *in forma pauperis*, 28 U.S.C. § 1915(a), provides that the Court may authorize the commencement of any suit without prepayment of fees by a person who submits an affidavit that includes a statement of all assets the person possesses and that the person is unable to pay such fees.

When a district court receives an application for leave to proceed in forma pauperis, it should examine the papers and determine if the requirements of [28 U.S.C.] § 1915(a) are satisfied. If they are, leave should be granted. Thereafter, if the court finds that the allegations of poverty are untrue or that the action is frivolous or malicious, it may dismiss the case . . . .

*Menefee v. Werholtz*, 368 F. App'x 879, 884 (10th Cir. 2010) (citing *Ragan v. Cox*, 305 F.2d 58, 60 (10th Cir. 1962)) (subsequent citation omitted). "The statute [allowing a litigant to proceed *in forma pauperis*] was intended for the benefit of those too poor to pay or give security for costs . . . ." *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 344 (1948). While a litigant need not be "absolutely destitute[.]" "an affidavit is sufficient which states that one cannot

because of his poverty pay or give security for the costs and still be able to provide himself and dependents with the necessities of life.” *Id.* at 339 (quotation marks omitted).

The Court grants Plaintiff’s Application to Proceed in District Court Without Prepaying Fees or Costs. Plaintiff signed an affidavit stating he is unable to pay the costs of these proceedings and provided the following information: (i) Plaintiff’s average monthly income amount during the past 12 months is \$850.00; (ii) Plaintiff’s monthly expenses total \$980.00; (iii) Plaintiff has \$46.00 in cash, \$73.86 in a bank account, and \$786.00 in retirement savings; and (iv) Plaintiff’s daughter relies on Plaintiff for support. The Court finds that Plaintiff is unable to pay the costs of this proceeding because he signed an affidavit stating he is unable to pay the costs of this proceeding and because his monthly expenses exceed his low monthly income.

## **II. Service on Defendants**

Section 1915 provides that the “officers of the court shall issue and serve all process, and perform all duties in [proceedings *in forma pauperis*].” 28 U.S.C. § 1915(d). The Court will not order service at this time because Plaintiff has not provided Defendant’s address. The Court will order service if Plaintiff files a motion for service that includes the address of each Defendant. Plaintiff should file such motion no later than **Monday, May 15, 2023**.

## **III. Case Management**

Generally, *pro se* litigants are held to the same standards of professional responsibility as trained attorneys. It is a *pro se* litigant’s responsibility to become familiar with and to comply with the *Federal Rules of Civil Procedure* and the *Local Rules of the United States District Court for the District of New Mexico* (the “Local Rules”).

Guide for Pro Se Litigants at 4, United States District Court, District of New Mexico (October 2022). The Local Rules, the Guide for Pro Se Litigants and a link to the Federal Rules of Civil Procedure are available on the Court’s website: <http://www.nmd.uscourts.gov>.

**IT IS ORDERED** that Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 2) is **GRANTED**;

**IT IS FURTHER ORDERED** that Plaintiff shall file a motion for service, including Defendant's address for service, no later than **May 15, 2023**.

  
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DAMIAN L. MARTINEZ  
UNITED STATES MAGISTRATE JUDGE